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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 158

KENNETH PETE STECKENRIDER,
Petitioner,

vs.

THE PEOPLE OF THE STATE OF MICHIGAN,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE RECORDER'S COURT FOR THE CITY OF DETROIT

WILLIAM G. COMB,
1512 Dime Bldg.,
Detroit 26, Michigan.

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PETITION FOR WRIT OF CERTIORARI TO THE RECORDER'S COURT FOR THE CITY OF DETROIT

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

KENNETH PETE STECKENRIDER prays that a Writ of Certiorari issue to review the judgment of the Recorder's Court of the City of Detroit, State of Michigan, entered in the above entitled cause on the 8th day of April, 1957.

Citations to Opinions Below

There are no reported opinions. An application for leave to appeal was filed with the Supreme Court of the State of Michigan, which application was on the 5th day

of March, 1958, denied without opinion. A petition for reconsideration of the denial of the application for leave to appeal was submitted to the Supreme Court of the State of Michigan, and, on the 16th day of April, 1958, an order was entered affirming the order of March 5, 1958, denying Petitioner's application for leave to appeal, again without an opinion.

Jurisdiction

The jurisdiction of the Court is invoked under 28 U.S.C.A. Sec. 1257(3).

Question Presented

Whether the trial court in permitting the amendment of the information violated the petitioner's right to be informed of the nature of the accusation against him.

Constitutional Question

This involves the application of the Sixth Amendment to the Constitution of the United States which provides, in part, as follows: "In all criminal prosecutions, the accused shall enjoy the right * * * to be informed of the nature and cause of the accusation." United States Code Annotated, Constitutional Amendments 1 to 13, Page 327.

Concise Statement of the Case

Petitioner shows that in the March term 1957 of the Recorder's Court for the City of Detroit, an information was returned charging the Petitioner with having on or about the 7th day of January, 1957, received or aided in the concealment of nickel anodes of the value of $500.00 of the personal property, goods and chattels of the J. C. Robinson Plating Company, a Michigan Corporation, and knowing the said goods and chattels have been stolen, taken and carried away. App. Infra p. 6. During the trial, one of the

prosecution witnesses testified that the nickel anodes were stolen from the J. C. Robinson Plating Company on or about the 4th day of January, 1957, and had been disposed of by the 10th day of January, 1957.

Another prosecution witness testified that the merchandise in question was stolen from the Northeast Plating Company on or about the 15th day of January, 1957, and sold to the Defendant.

At the conclusion of the People's case, the prosecutor moved to amend the information to read "the 15th day of January, 1957, and also to amend as to ownership of this particular property to read "the Northeast Plating Company" (Record Page 155). App. Infra p. 8.

The Court suggested that the amendment read "the Northeast Plating Company and/or the J. C. Robinson Company" (Record Page 155). App. Infra p. 8.

Counsel for the Defendant objected to the granting of the motion upon grounds including "It is denying this Defendant a fair and impartial trial and a violation of his Constitutional rights, and doesn't properly advise him of the nature of the charge against him" (Record Page 155). App. Infra p. 8. Further objections were made upon the ground that the defendant came prepared to defend upon the charge in the information.

The trial court in referring to the motion stated "It isn't a new charge, it is merely getting the one who owns it and the day or date to conform with the proofs. It may be amended to read "on or about the 15th day of January, 1957, and the ownership of the J. C. Robinson Plating Company and/or the Northeast Plating Company, a Michigan Corporation." (Record Page 157). App. Infra p. 8.

After the conviction, a motion for a new trial was timely filed upon the following grounds, as well as other grounds: "That the Defendant was not properly informed of the

charge against him." "That allowing the information to be amended at the close of the People's testimony was in violation of the Defendant's Constitutional rights to be informed of the nature of the charge against him." App. Infra p. 9. "That by reason of the amendment permitted by the Court, Defendant did not have a fair and impartial trial, and that Defendant was prepared to defend against the charge that on or about the 7th day of January, 1957, he received property of J. C. Robinson Company as alleged in the information to have been stolen."

In the application for leave to appeal timely filed by the Petitioner, among others, the grounds set forth are as follows: "That the Court erred in allowing the information to be amended at the close of the People's testimony which was in violation of Defendant's Constitutional rights to be informed of the nature of the charge against him." App. Infra p. 10.

Petitioner filed with the Supreme Court of the State of Michigan a Petition to reconsider the denial of his application for leave to appeal of March 5, 1958, App. Infra p. 10, stating further that a similar question has not been passed upon by this Court and that Petitioner deemed it sufficiently important that a determination be made by the Supreme Court of the State of Michigan upon the issues raised in the application and particularly the issue relative to the constitutional question relative to the rights of the accused to be informed of the nature of the accusation against him, referring to the provision of the Michigan Constitution, Article 2, Section 9, and the Constitution of the United States, Amendment 6, App. Infra p. 13 which Petition for Reconsideration was denied without opinion on the 16th day of April, 1958. App. Infra p. 14.

Reasons for Granting the Writ

The information, as amended, upon which the Petitioner was convicted violates the Defendant's constitutional right to be advised of the nature and cause of the accusation against him. And the information is such that he could not be protected by a plea of former jeopardy against another prosecution for the offense.

The purpose of specificity in the information is, primarily, to give the defendant the benefit of his constitutional right to be informed of the nature and cause of the accusation against him and, secondarily, to protect the Defendant from subsequent prosecution for the same offense.

Conclusion

For the foregoing reasons, this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

WILLIAM G. COMB,
1512 Dime Bldg.,
Detroit 26, Michigan.

JUNE 19, 1958.

APPENDIX

General Information

State of Michigan,
County of Wayne, City of Detroit, ss:

The Recorder's Court of the City of Detroit

In the Name of the People of the State of Michigan, Gerald K. O'Brien, Prosecuting Attorney in and for the said County of Wayne, who prosecutes for and on behalf of the People of said State in said Court, comes now here in said Court in the March term thereof, A.D. 1957, and gives the said Court to understand and be informed that Kenneth Pete Steckenrider late of the said City of Detroit, in said county, heretofore, to-wit, on or about the 7th day of January, A. D. 1957, at the said City of Detroit, in the County aforesaid nickel anodes of the value of Five Hundred Dollars ($500.00) of the personal property, goods and chattels of J. C. Robinson Plating Co., a corporation organized and existing under the laws of the State of Michigan, then lately before feloniously stolen, taken and carried away, or embezzled and/or converted feloniously did buy, receive or aid in the concealment thereof, he, the said Kenneth Pete Steckenrider, then and there well knowing the said goods and chattels to have been feloniously stolen, taken and carried away, or embezzled and/or converted; contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the People of the State of Michigan.

Note—See Sec. 750.535 Act 40, P.A. 1952.

Gerald K. O'Brien,
Prosecuting Attorney.

Drafted by John J. Rusinack,
Assistant Prosecuting Attorney.

The Recorder's Court of the City of Detroit

No. A-88741

THE PEOPLE OF THE STATE OF MICHIGAN

vs.

KENNETH PETE STECKENRIDER

Information for RECEIVING STOLEN PROPERTY

WITNESSES: John McGruddy, Mel Wallace, Philip Guluso, Gerald Vancil, Amos Munn, Lester Kull, Ernest Beightol, Elmer Cwengros, Norman Nash, Thelma Lilley, Ellanora Golston, Bernard Walker, Ray Johnson, Betty Jorgenson.

Excerpts from Transcript of Record:

Page 154—"Mr. KOTELLY: The controlling question is whether or not the defendant received the property with the knowledge, of course, same was stolen. The question as to the ownership and as to the time is not the essence of the issue pertaining to the charge, and I will ask the Court for permission, I am going to request that the People's Information be amended to read the 15th day of January, 1957, and also to amend as to the ownership of this particular property to read the Northeast Plating Company.

The COURT: And/or the J. C. Robinson Company?

Mr. KOTELLY: Yes.

The COURT: Yes.

Mr. KOTELLY: In order to comply with the proofs.

Mr. COMB: I want to go on the record as objecting to such a motion, if the Court please, because it doesn't conform to the testimony. Further, this is set forth and is an entirely new offense of which we were not advised at the time we received the Information. It is denying this defendant a fair and impartial trial and a violation of his Constitutional rights, and doesn't properly advise him of the nature of the charge against him."

Page 157—"The COURT: You wanted the Information amended for the date to read on or about the 15th and to amend it to add and say J. C. Robinson Plating Company and/or the Northeastern Plating Company?

Mr. KOTELLY: A Michigan corporation.

The COURT: A Michigan corporation. I think you objected?

Mr. COMB: Yes, I still object.

The COURT: It isn't a new charge, it is merely getting the one who owns it and the day or date to conform with the proofs. It may be amended to read on or about the 15th day of January, 1957, and the ownership of the J. C. Robinson Plating Company and/or the Northeast Plating Company, a Michigan corporation.

All right."

Excerpts from Defendant's Motion for New Trial.

Now comes Kenneth Pete Steckenrider, Defendant in the above entitled cause and moves the Court to grant a new trial for the following reasons:

* * * * *

6. That allowing the Information to be amended at the close of the People's Testimony was in violation of defendant's rights to be informed of the nature of the charges against him.

7. That the Court permitted the People to amend the Information so as to form a new and entirely different charge as that contained in the Information.

Excerpts from Application for Leave to Appeal.

"5. That the Court erred in allowing the information to be amended at the close of the People's Testimony, which was in violation of the Defendant's constitutional rights to be informed of the nature of the charge against him."

At a Session of the Supreme Court of the State of Michigan, Held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the fifth day of March in the year of our Lord one thousand nine hundred and fifty-eight.

Present the Honorable,

John R. Dethmers,
Chief Justice.

Leland W. Carr,
Harry F. Kelly,
Talbot Smith,
George Edwards,
John D. Voelker,
Thomas M. Kavanagh,
Associate Justices.

Recorder's Court No. A88741

47724½

The People of the State of Michigan, plaintiff,

vs.

Kenneth Pete Steckenrider, defendant

In this cause an application is filed by defendant for leave to appeal from an order of the Recorder's Court for the City of Detroit and an answer in opposition thereto having been filed by plaintiff and due consideration thereof having been had by the court, It is ordered that the application be and the same is hereby Denied.

State of Michigan, ss:

I, Donald F. Winters, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 7th day of March in the year of our Lord one thousand nine hundred and fifty-eight.

Donald F. Winters,
Clerk.

Excerpts from Defendant's Petition for Reconsideration of the Denial of his Application for Leave to Appeal.

"Now comes Kenneth Pete Steckenrider, by his attorney, William G. Comb, and petitions the Court to reconsider the application heretofore filed in this cause, which application was denied by this Court under date of March 7, 1958, for the following reasons:

That a similar question has not been passed upon by this Court and Petitioner deems it sufficiently important that a determination be made by this Court of the issues raised in the application and particularly the issue relative to the constitutional question relative to the rights of the accused to be informed of the nature of the accusation against him.

This relates to the provision of the Michigan Constitution, Article 2, Section 9, and the Constitution of the United States, Amendment 6.

• • • • •

The allegations contained in the Information are disjunctively and alternatively charged so as to leave the Defendant uncertain as to the accusation against him.

It has been held in *U. S.* v. *Avils*, D. C. Calif., 1915, 222 F. Supp. 474, that there are two principals by which it may be determined whether the Defendant has been informed of the nature of the accusation, first, that it must be sufficiently certain to enable Defendant to plead jeopardy in a subsequent indictment and second, it must be sufficiently certain as a pleading to enable Defendant to make his defense.

In *Sutton* v. *U. S.*, C. C. A. Ga. 1946, 157 F. 2d. 661, the Court held that under this Amendment (Amendment 6 United States Constitution), the accused must be so fully and clearly informed of the charge against him as to enable him to prepare his defense and not be taken by surprise at the trial, and information as to the alleged offense must be so definite and certain that the accused may be plea of former jeopardy against another prosecution for the same offense."

At a Session of the Supreme Court of the State of Michigan, Held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the sixteenth day of April in the year of our Lord one thousand nine hundred and fifty-eight.

Present the Honorable,

John R. Dethmers,
Chief Justice.
Leland W. Carr,
Harry F. Kelly,
Talbot Smith,
Eugene F. Black,
George Edwards,
John D. Voelker,
Thomas M. Kavanagh,
Associate Justices.

47724½

The People of the State of Michigan, plaintiff,

vs.

Kenneth Pete Steckenrider, defendant

In this cause a motion is filed by defendant for reconsideration of the order heretofore entered herein on March 5, 1958, and an answer thereto having been filed by plaintiff, and due consideration thereof having been had by the Court, it is ordered that the order heretofore entered herein as aforesaid stand affirmed.

State of Michigan, ss:

I, Donald F. Winters, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 18th day of April in the year of our Lord one thousand nine hundred and fifty-eight.

DONALD F. WINTERS,
Clerk.

(912-6)

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 158

KENNETH P. STECKENRIDER,

Petitioner,

vs.

STATE OF MICHIGAN,

Respondent.

RESPONSE TO PETITION FOR CERTIORARI

I.

JURISDICTION

Petitioner seeks to invoke the jurisdiction of this court under 28 USCA, Sec. 1257(3). He asks certiorari to vacate a verdict of conviction, claiming under the Sixth Amendment the right to be informed of the nature and cause of the accusation against him. He does not challenge the provision of the Michigan code of criminal procedure which permits amendments to a criminal information. 3 CL 1948, Sec. 767.76.[1]

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[1] Printed in Appendix.

II.

STATEMENT OF THE CASE

Essentially the statements, at pages 2, 3 and 4 of the petition for certiorari, are accurate. We must add, however, that the two 17-year old boys who testified for the prosecution established that the petitioner paid them some $2,100.00 for a large quantity of stolen nickel anodes; they told the petitioner of the theft, and he furnished a rented truck in which the stolen metal was transported to his possession. No testimony was offered by the defense.

One of the boys fixed the date of the theft as January 4, 1957, while the other testified that it occurred on January 14, 1957.

REASONS WHY WRIT SHOULD NOT ISSUE

A.

At the trial, defense counsel objected to amendment of the date in the videlicet and to the insertion of a second name to identify the owners of the stolen property, for whose purchase and concealment the petitioner was convicted. However, petitioner's counsel made no request for a continuance to permit an opportunity to meet or counter the proofs, nor did he attempt to have stricken the testimony which did not precisely adhere to the date and owner

stated in the information. As indicated, the defense offered no testimony whatsoever.[2]

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[2]

Mich. Comp. Laws 1948 §767.76 (Henderson); Mich. Stat. Ann. (Rev) §28.1016 permits the amendment of an indictment:

"No indictment shall be quashed, set aside or dismissed or motion to quash be sustained or any motion for delay of sentence for the purpose of review be granted, nor shall any conviction be set aside or reversed on account of any defect in form or substance of the indictment, unless the objection to such indictment, specifically stating the defect claimed, be made prior to the commencement of the trial or at such time thereafter as the court shall in its discretion permit. The court may at any time before, during or after the trial amend the indictment in respect to any defect, imperfection or omission in form or substance or of any variance with the evidence. If any amendment be made to the substance of the indictment or to cure a variance between the indictment and the proof, the accused shall on his motion be entitled to a discharge of the jury, if a jury has been impaneled and to a reasonable continuance of the cause unless it shall clearly appear from the whole proceedings that he has not been misled or prejudiced by the defect or variance in respect to which the amendment is made or that his rights will be fully protected by proceeding with the trial or by a postponement thereof to a later day with the same or another jury. In case a jury shall be discharged from further consideration of a case under this section, the accused shall not be deemed to have been in jeopardy. No action of the court in refusing a continuance or postponement under this section shall be reviewable except after motion to and refusal by the trial court to grant a new trial therefor and no writ of error or other appeal based upon such action of the court shall be sustained, nor reversal had, unless from consideration of the whole proceedings, the reviewing court shall find that the accused was prejudiced in his defense or that a failure of justice resulted."

B.

Amendment on the information had no purpose beyond conforming the pleading to the proofs. The Supreme Court of Michigan has consistently upheld the principle that an information may be amended to conform with the trial proofs, provided the defendant is not accused of a new and different crime. *People vs. Jones*, 308 Mich. 43. At pp. 45-47, the court said:

> "The time when the illegal operation was performed is not an essential element of the offense, except to the extent of showing that Mrs. Holstein was pregnant at the time the illegal operation was performed. The time of the offense was alleged under a videlicet in the information and it was sufficient to establish that the offense occurred on the 14th.
>
> • • •
>
> "'A *videlicet* avers a date tentatively, and unless a particular day or date is essential to a crime there is no variance if the evidence shows that the very crime charged was actually committed on a different date.'"

People vs. Vanderjagt, 235 Mich. 620, pp. 621-622:

> "This court has frequently held that it was competent to amend the date in an information where, as in this case, time was not of the essence of the offense."

Permitting the amendment to include the name "Northeast Plating Company, a Michigan Corporation" served merely to identify the owner of the stolen property. Deprivation of basic rights does not appear on any remotely plausible basis.

Clearly, a new offense may not be substituted by amendment. Substitution was not attempted here. The substantial requisites of the crime alleged were presented in the information. Therein petitioner was informed that he stood accused of knowingly buying and receiving stolen nickel anodes of the value of $500.00, on or about January 7th, 1957. The actual owner of the goods was of no material significance, so long as in fact they had been stolen. Thieves may refuse to disclose their source to a receiver; they may not even recall or know from whom the property was stolen. It cannot be gainsaid that they care little concerning these details.

The ingredients of the offense of which petitioner was convicted are:

1. The property was stolen, and

2. The accused had knowledge of the theft when the purchase was made.

The date of the theft and the ownership of the stolen property are not indispensable components.

Had petitioner offered a defense of alibi, the date might have been of considerable significance. He neither offered proof of alibi nor notice of the defense as required by statute.[3] He offered no testimony or proofs whatsoever. There was no showing or representation that the defense was adversely affected either by the change in the date to conform to the testimony or by the addition of the name of an additional victim of the theft.

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[3]

3 Compiled Laws 1948, Sec. 768.20.

C.

The Sixth Amendment, whose refuge is sought by petitioner, is not applicable here, because it does not apply to the states. See *Feldeman vs. U.S.*, 322 US 487.

CONCLUSION

It is therefore urged that the petition for writ of certiorari be denied.

Respectfully submitted,

Paul L. Adams,
Attorney General of Michigan

Samuel J. Torina,
Solicitor General of Michigan

Samuel H. Olsen,
Prosecuting Attorney of Wayne County

Samuel Brezner,
Assistant Prosecuting Attorney of Wayne County
For Respondent

APPENDIX

Sec. 767.67 Compiled Laws of 1948. *Indictment; charging accessory without principal.*

Sec. 67. Any number of accessories after the fact, or receivers, buyers, or persons aiding in the concealment of any stolen money, goods, or property may be charged with substantive felonies in the same indictment, notwithstanding the principal felon shall not be included in the same indictment, or shall not be in custody or amendable to justice.

HISTORY: CL 1929, 17281. This section re-enacts Sec. 5 of Act 77 of 1855, being CL 1857, 6051; CL 1871, 7920; How. 9531; CL 1897, 11916; CL 1915, 15743.